ETHICAL FRONTIERS IN GAMING LAW: NAVIGATING THE RULES OF PROFESSIONAL CONDUCT

AGENDA

Competence and Technology

Confidentiality

Conflicts of Interest

Candor and Witness Preparation

Avoiding Client Fraud

Opposing Counsel and Third Parties

In the 2006 James Bond movie Casino Royale, what card game does Bond play to take down the villain Le Chiffre?

Baccarat

0%

Blackjack

0%

Craps

0%

Texas Hold'em

0%
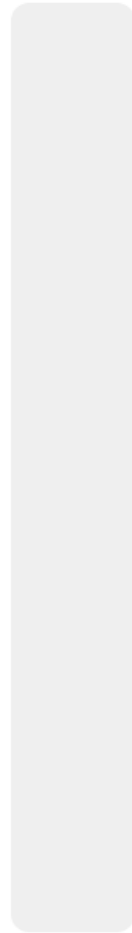
None of the above

0%

COMPETENCE
AND
TECHNOLOGY

RPC 1.1 – COMPETENCE

- **A lawyer shall provide competent representation to a client.**

- **Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**
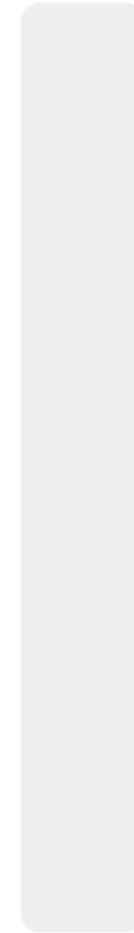
A competent attorney should understand artificial intelligence and how to use it.

0%

0%

Agree

Disagree

UNDERSTANDING AI IN GAMING

Competence in legal technology is no longer optional. RPC 1.1 requires attorneys to understand the risks and benefits associated with the tools they use. Familiarity with GAI capabilities and limitations ensures ethical and effective usage.

PRACTICAL STEPS:

Invest in Training: Attend continuing legal education (CLE) sessions focused on AI in legal practice. Consider consulting IT professionals or AI experts to deepen your understanding.

PRACTICAL STEPS:

Test Before You Trust: Use a small subset of non-confidential data to evaluate the tool's performance and accuracy before applying it in active matters.
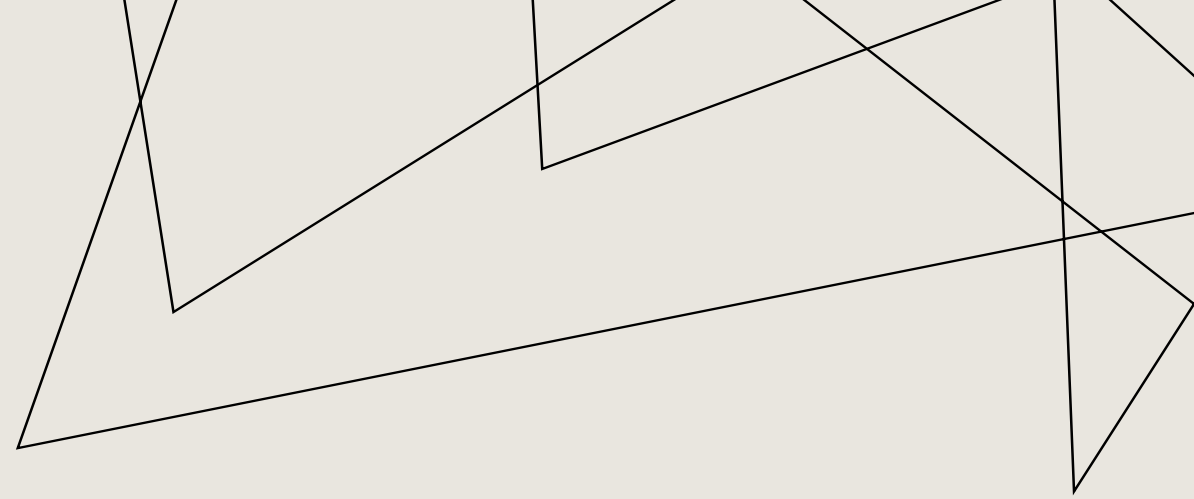
PRACTICAL STEPS:

Stay Updated: Regularly review advancements in GAI technology to stay ahead of potential ethical and practical challenges.

PRACTICAL STEPS:

Rely on Experts: Collaborate with tech-savvy colleagues or third-party professionals when integrating complex AI tools into your workflow.

AVOID AI HALLUCINATIONS

"Hallucinations" occur when GAI tools generate outputs that seem plausible but lack factual or legal basis. Left unchecked, these errors can lead to misleading advice or filings, violating the duty of competence (RPC 1.1) and candor (RPC 3.3).

PRACTICAL STEPS

Verify Everything: Treat GAI outputs as drafts, not definitive answers. Independently verify all generated content before sharing it with clients, courts, or opposing parties.

PRACTICAL STEPS

Use Reliable Data Sets: Opt for tools trained on vetted and up-to-date legal databases. Tools designed specifically for the legal industry are less likely to produce unreliable outputs.

PRACTICAL STEPS

Develop a System: Implement a standardized process for reviewing and validating AI-generated content, ensuring no critical detail is overlooked.

PRACTICAL STEPS

Learn from Mistakes: Document instances of hallucinations and adjust your approach to minimize similar risks in the future.

COMMUNICATE WITH YOUR CLIENT

Transparency about your use of GAI tools builds trust and ensures compliance with Model Rule 1.4, which governs attorney-client communication. Clients have the right to know if AI is part of the process, especially when it impacts fees, or the strategy used in their case.

PRACTICAL STEPS

Be Proactive: Explain how you intend to use GAI tools in the engagement letter, emphasizing how these tools improve efficiency and outcomes.

PRACTICAL STEPS

Tailor the Discussion: If the client's case involves sensitive data, provide a detailed explanation of how AI will be used and what safeguards are in place.

PRACTICAL STEPS

Respond to Questions: Be prepared to answer client inquiries about the role of AI in their case, ensuring they understand the benefits and risks.

PRACTICAL STEPS

Provide Updates: Keep clients informed about significant developments, especially if the use of GAI tools affects the cost or timeline of their matter.

Which pop icon released the hit song Poker Face in 2008?
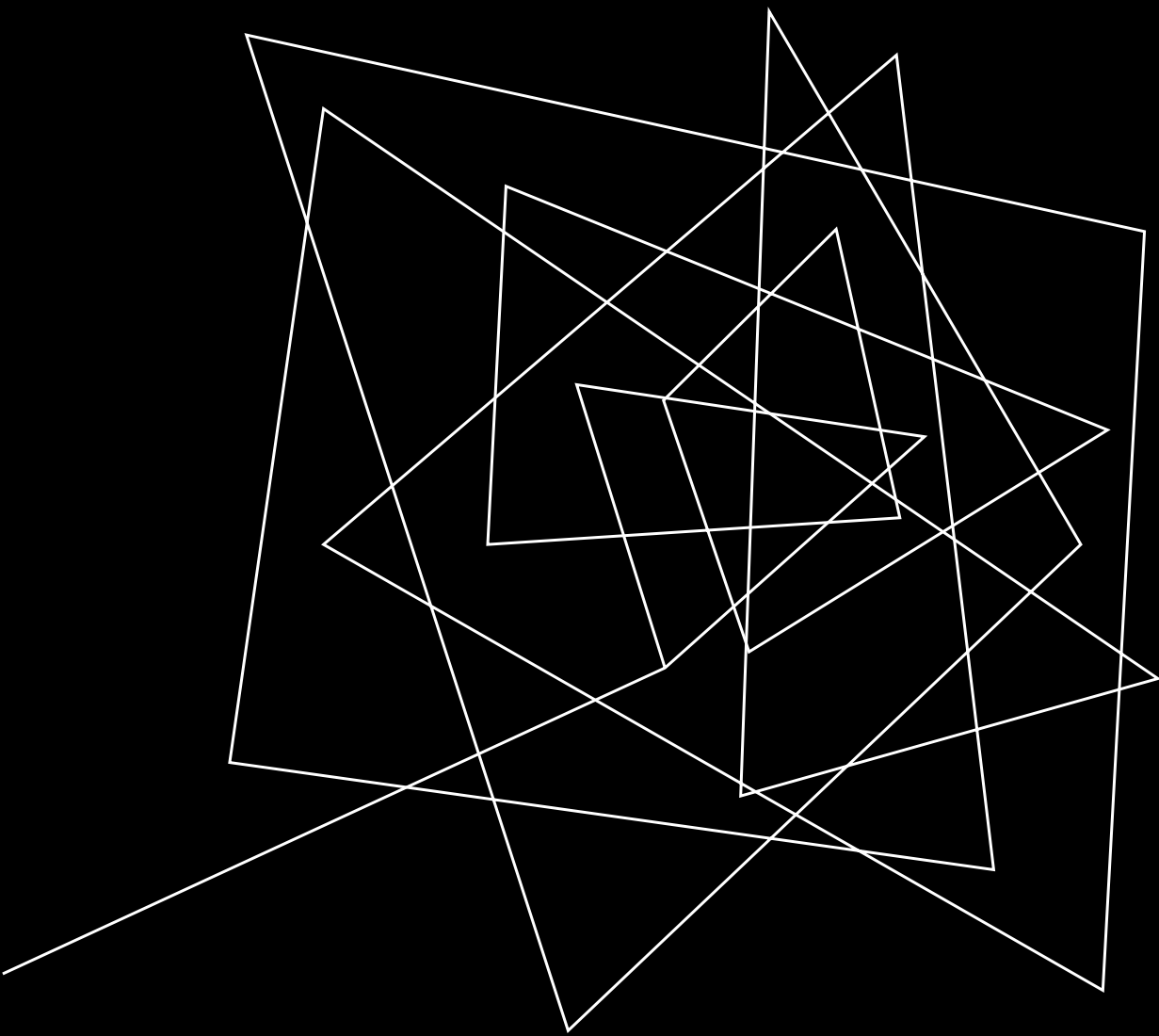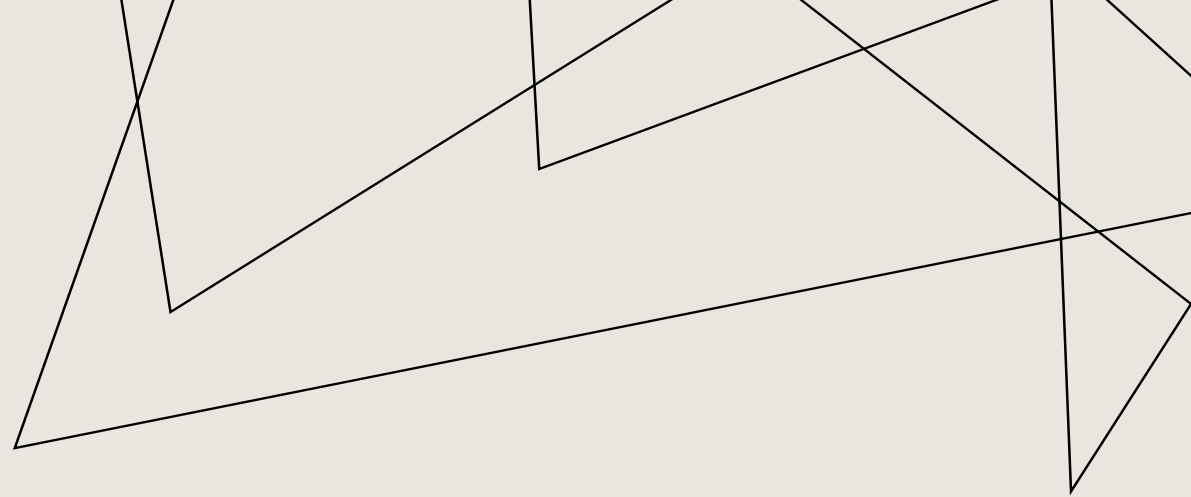
Katy Perry

0%

Britney Spears

0%

Madonna

0%

Lady Gaga

0%

SAFEGUARD
CLIENT
CONFIDENTIALITY

RPC 1.6 CONFIDENTIALITY

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraphs (b) and (d).
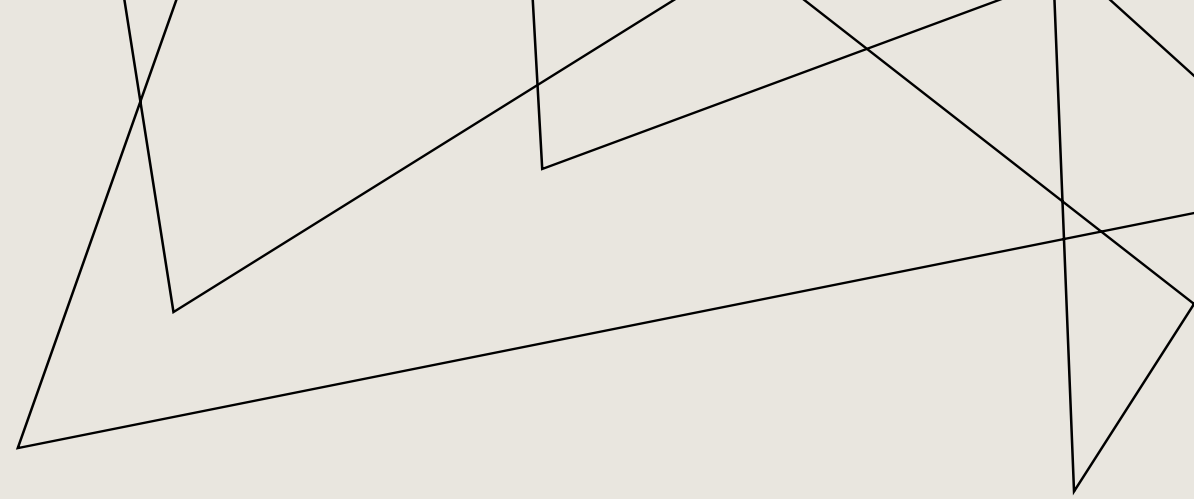
RPC 1.6 CONFIDENTIALITY

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

RPC 1.6 CONFIDENTIALITY

(b)(3) A lawyer *may* reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary … to prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services have been or are being used, but the lawyer shall, where practicable, first make reasonable effort to persuade the client to take corrective action;

SAFEGUARD CLIENT CONFIDENTIALITY

Client confidentiality is a cornerstone of legal ethics. RPC 1.6 obligates attorneys to protect all information related to the representation of a client. When using GAI tools, this means thoroughly vetting the platform for security risks and understanding how inputted data is processed and stored.

PRACTICAL STEPS

Read the Fine Print: Examine the GAI tool's Terms of Use and privacy policy. Determine if the platform retains, shares, or repurposes inputted data.

PRACTICAL STEPS

Opt for Secure Platforms: Use AI tools designed specifically for legal professionals that guarantee client data security and compliance with confidentiality standards.

PRACTICAL STEPS

Get Informed Consent: If inputting client information into a GAI tool, disclose the risks and benefits to your client and obtain their informed consent.

PRACTICAL STEPS

Keep It Anonymous: Whenever possible, anonymize client information before using it with AI tools to minimize risks.

CONFLICTS OF INTEREST

RPC 1.7.
CONFLICT OF INTEREST: CURRENT CLIENTS

… a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.
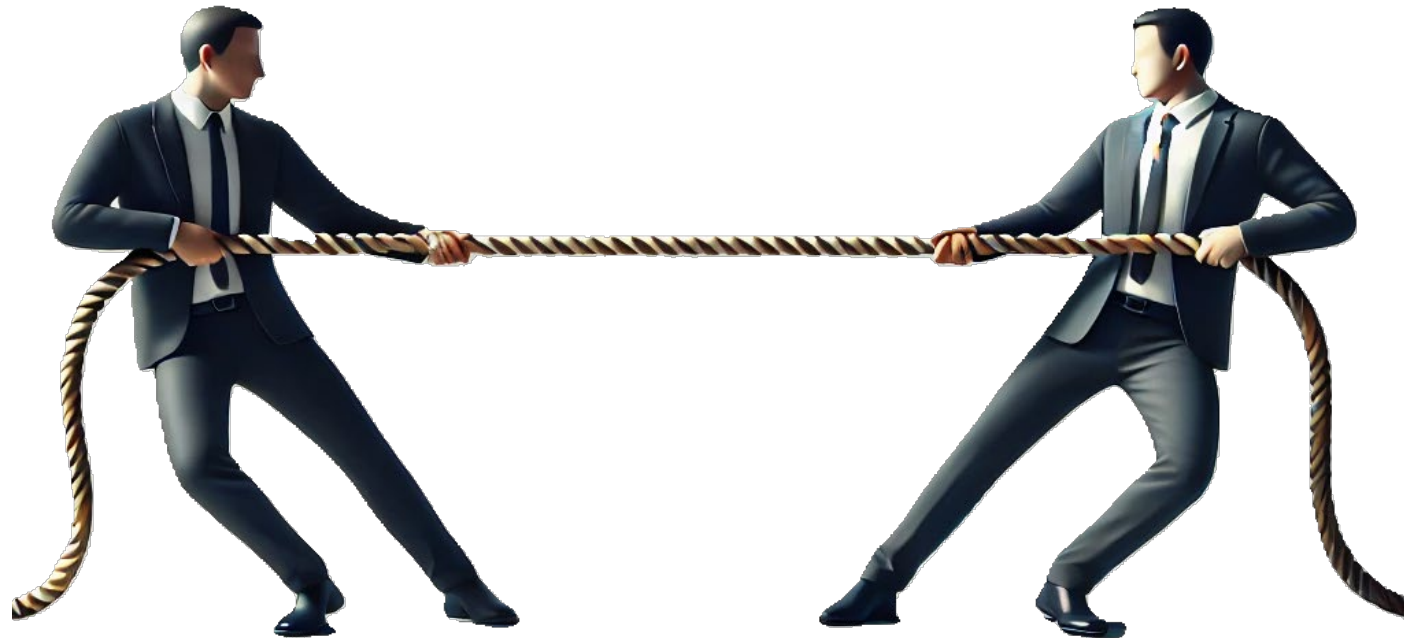
RPC 1.7.
CONFLICT OF INTEREST: CURRENT CLIENTS

Loyalty: Loyalty is fundamental to the lawyer-client relationship.

Sources of Conflicts: Conflicts may stem from obligations to another client, a former client, a third party, or the lawyer's personal interests.

RPC 1.7.
CONFLICT OF INTEREST: CURRENT CLIENTS

WHO IS THE CLIENT?

RPC 1.2

a lawyer shall abide by a client's decisions concerning the objectives of representation and [. . .] shall consult with the client as to the means by which they are to be pursued.

Julie works for the Nevada Attorney General. She has been assigned to the Gaming Control Board. Who is Julie's client?

the Attorney General

0%

the members of the Gaming Control Board

0%

the Gaming Control Board

0%

the State of Nevada

0%

None of the above

0%

WHO IS THE CLIENT?

RPC 1.13(a)

A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

COMMENT 2 TO RPC 1.13

- Constituent communications are privileged.

- For example, if the organization asks its lawyer to investigate allegations of wrongdoing, then the lawyer's constituent interviews are confidential.

- However, the organization owns the privilege.

RPC 1.13(f)

- Lawyer must notify adverse constituent:
  - That the organization is the client;
  - That a conflict exists;
  - That constituent should obtain independent counsel;
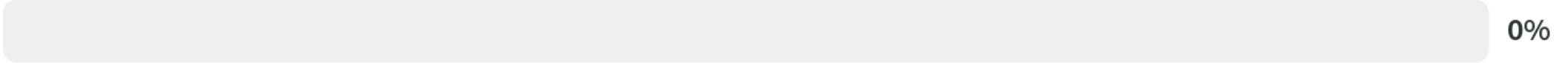 - That discussions are NOT privileged.

RPC 1.13(f)

Failure to warn the constituent may disqualify you from representing the organization, if you have received information from the constituent that may be harmful to his position.

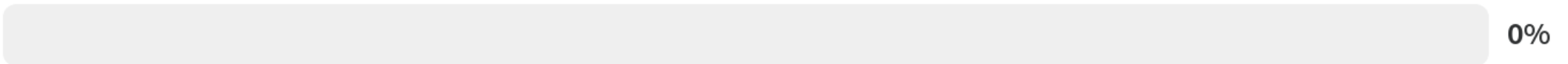# In Ocean's Eleven, what Las Vegas casino do the crew plan to rob?
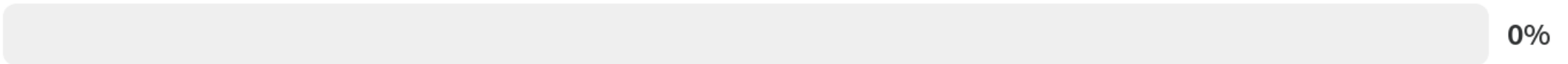
The Bellagio

0%

The Mirage

0%

The MGM Grand

0%

All of the above

0%

CANDOR AND WITNESS PREPARATION

RPC 3.3 CANDOR TOWARD THE TRIBUNAL

Lawyers must:

- Not make false statements of fact or law to a tribunal.

- Not offer evidence they know to be false.

- Take remedial measures if false evidence is offered.

RPC 3.4
FAIRNESS TO
OPPOSING COUNSEL

Lawyers must NOT:

- Obstruct access to evidence or alter/destroy it.

- Counsel witnesses to give false testimony.

- Use illegal methods to gather evidence.

RPC 4.1
TRUTHFULNESS IN STATEMENTS TO OTHERS

Lawyers must not make false statements of material fact or law to third parties.

HYPOTHETICAL

You are representing Casino XYZ in a licensing hearing before the Nevada Gaming Control Board. During witness preparation, the casino's compliance officer, Jane, informs you she is unsure about certain financial discrepancies in the company's internal reports. She mentions that the CEO suggested she "smooth over the details" during her testimony to avoid raising unnecessary questions. The CEO explicitly tells you, "We just need her to say the numbers align; it's not a big deal, and the Board won't look into it anyway."

What is the most appropriate course of action for you as the lawyer?

Advise Jane not to lie, but smoothing over the details is not necessarily untruthful.

0%

Explain to Jane how to phrase her testimony to avoid being untruthful.

0%

Advise Jane to testify truthfully and document her concerns.

0%

Withdraw from representing Casino XYZ.

0%

None of the above

0%

WITNESS PREPARATION

Do:

- Review all documents, evidence, and timelines with the witness.

- Ensure the witness understands the facts.

- Ask open-ended questions to clarify discrepancies in a witness's account.

- Inform witnesses about the consequences of false testimony.

Don't:

- Coach the witness to align their testimony with legal arguments.

- Script testimony.

- Suggest specific words or phrases.

- Pay a lay witness.

- Procure a witness's absence.

UNETHICAL CONDUCT DURING WITNESS TESTIMONY

- Winking at a witness.

- Kicking a deponent under the table.

- Passing notes or whispering to a witness.

- Texting to a witness.

- Speaking objection.

- Requesting a break to coach.

What 1995 movie directed by Martin Scorsese follows the life of a casino executive in Las Vegas?

The Gambler

0%

Rounders

0%

The Big Short

0%
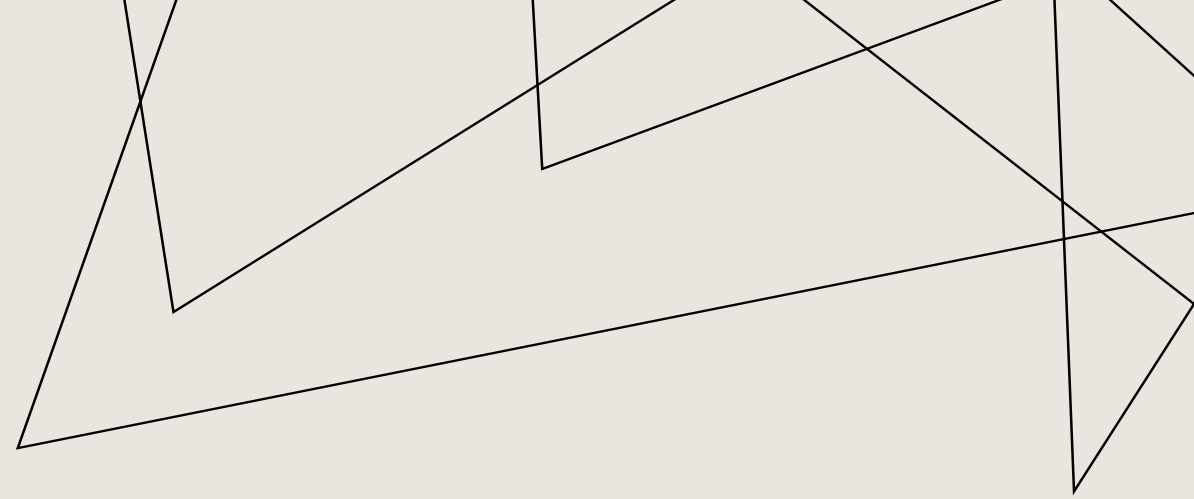
Casino

0%

DUTY TO INQUIRE

- A lawyer is not a "gatekeeper" to deter wrongdoing.

- But a lawyer must undertake client due diligence to avoid facilitating illegal activity.

WHAT DOES IT MEAN TO "INQUIRE INTO AND ASSESS THE FACTS AND CIRCUMSTANCES"?

Consider and Weigh Risks from:

- the client;

- the lawyer's unfamiliarity with the client;

- the nature of the requested legal services;

- the relevant jurisdictions; and

- the sender or recipient of the funds.

WARNING SIGNS

- High-value or unconventional deals.

- Unexplained cash movements.

- Overcomplicated structures for simple transactions.

- Ambiguity about ownership or business purposes.

- Clients unwilling to meet Know Your Customer (KYC) or AML requirements.

HYPOTHETICAL

An investor based in Macau contacts an established Nevada gaming lawyer seeking representation regarding the proposed purchase of an online gaming business headquartered in Las Vegas. The lawyer does not know the investor but a well-known gaming lawyer in Reno, before retiring, had represented the investor in several similar purchases and referred the client.

HYPOTHETICAL

- Is the investor seeking representation for himself as an individual, for an entity the investor controls or represents, or both? Who is the entity?

- What is the scope of services? Negotiation? Licensing? Taxes? Other subjects?

- How is he financing the deal? What is the source of funds?

ABA OPINION 491

"If the client does not agree to provide information, then the lawyer must decline the representation or withdraw. If the client agrees, but then temporizes and fails to provide the requested information, or provides incomplete information, the lawyer must remonstrate with the client. If that fails to rectify the information deficit, the lawyer must withdraw."

EX PARTE COMMUNICATIONS

RPC 4.2

Communication With Person Represented by Counsel. In representing a client, a lawyer **shall not** communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, **unless** the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

EX PARTE COMMUNICATIONS
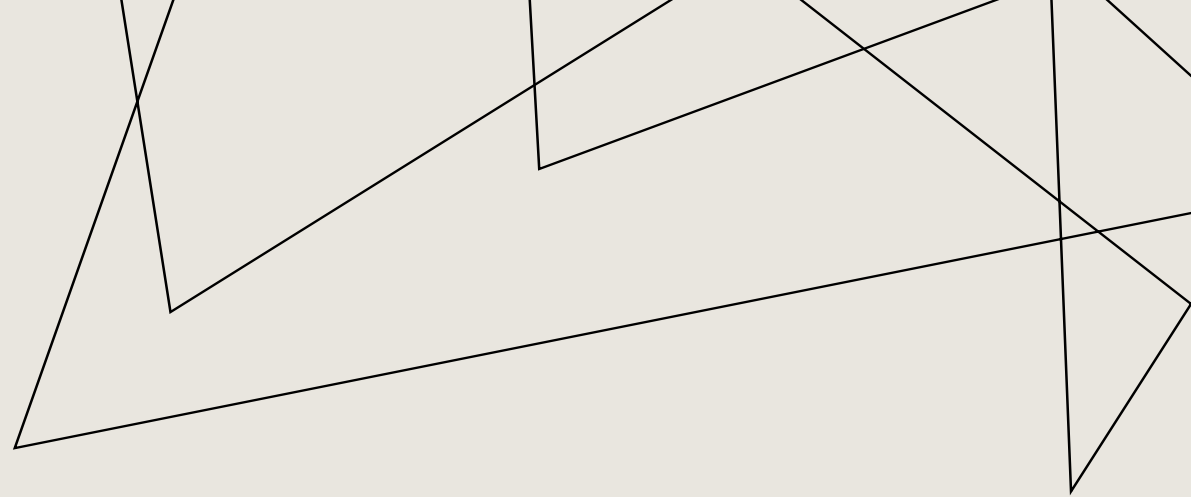
Communications with Agency Officials Permitted:

- With agency counsel consent;

- On policy matters only;

- During official proceedings; OR

- If allowed by law (e.g., open records requests).

QUESTIONS?

Daniel Hooge

702-317-1444

danh@nvbar.org

www.nvbar.org